



PTO/SB/26 (10-00)

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**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING**  
**REJECTION OVER A PRIOR PATENT**

Docket Number (Optional)

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In re Application of: Phillip Davis et al.

Application No.: 09/843,211

Filed: 25 April 2001

For: Instrument Organizer With Movable Stabilizing Post

*Terminal  
CAPP  
Disclaimer  
H.P.M.*

1/9/03 MAR 12 2003

The owner\*, General Hosp. Suf of 100% percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,367,637. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1.  For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2.  The undersigned is an attorney or agent of record.

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55.00 OP

*Phillip Davis*

Signature

*2/24/03*

Date

Mr. Phillip Davis

Typed or printed name

Terminal disclaimer fee under 37 CFR 1.20(d) included.

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\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).  
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Application, Washington, DC 20231.



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MANUAL OF PATENT EXAMINING PROCEDURE

amendment are submitted to the Office of Enrollment and Discipline for appropriate action.

**714.01(c) Signed by Attorney or Agent Not of Record**

See MPEP § 405. A registered attorney or agent acting in a representative capacity under 37 CFR 1.34, may sign amendments even though he or she does not have a power of attorney in the application. See MPEP § 402.

**714.01(d) Amendment Signed by Applicant But Not by Attorney or Agent of Record**

If an amendment signed by the applicant is received in an application in which there is a duly appointed attorney or agent, the amendment should be entered and acted upon. Attention should be called to 37 CFR 1.33(a) in patent applications and to 37 CFR 1.33(c) in reexamination proceedings. Two copies of the action should be prepared, one being sent to the attorney and the other directly to the applicant. The notation: "Copy to applicant" should appear on the original and on both copies.

**714.01(e) Amendments Before First Office Action**

A preliminary amendment is an amendment that is received in the Office on or before the mail date of the first Office action under 37 CFR 1.104. See 37 CFR 1.115(a). If the date of receipt (37 CFR 1.6) of the amendment is later than the mail date of the first Office action and is not responsive to the first Office action, the Office will not mail a new Office action, but simply advise the applicant that the amendment is nonresponsive to the first Office action and that a responsive reply must be timely filed to avoid abandonment. See MPEP § 714.03.

A preliminary amendment not filed along with the original application does not enjoy the status of part of the original disclosure. See MPEP § 608.04(b). Where an application filed under 37 CFR 1.53(b) is filed without a signed oath or declaration and such application is accompanied by an amendment, that amendment is considered a part of the original disclosure. The subsequently filed oath or declaration must refer to both the application and the amendment. Any

copy of the application as filed must include a copy of the amendment as well, particularly where certified copies for priority purposes are requested.

Preliminary amendments should either accompany the application or be filed after the application has received its application number and filing date. See MPEP § 502.

Any amendment canceling claims in order to reduce the filing fee should be filed with the application. Since only amendments canceling claims are entered before the filing fee is calculated, any other changes to the claims and/or specification should be part of a separate amendment. See MPEP § 506.

If a preliminary amendment fails to comply with 37 CFR 1.121, applicant will be notified by way of a Notice of Non-Compliant Amendment and given a non-extendable period of one month to bring the amendment into compliance with 37 CFR 1.121. If no corrective action is taken by the applicant, examination of the application may commence without entry of the proposed non-compliant preliminary amendment. See MPEP § 714.03.

A preliminary amendment will be entered unless it is disapproved by the Commissioner. A preliminary amendment may be disapproved by the Commissioner if the preliminary amendment unduly interferes with the preparation of an Office action. 37 CFR 1.115(b). See MPEP § 714.03(a).

**714.02 Must Be Fully Responsive**

*37 CFR 1.111. Reply by applicant or patent owner to a non-final Office action.*

(a)(1) If the Office action after the first examination (§ 1.104) is adverse in any respect, the applicant or patent owner, if he or she persists in his or her application for a patent or reexamination proceeding, must reply and request reconsideration or further examination, with or without amendment. See §§ 1.135 and 1.136 for time for reply to avoid abandonment.

(2) A second (or subsequent) supplemental reply will be entered unless disapproved by the Commissioner. A second (or subsequent) supplemental reply may be disapproved if the second (or subsequent) supplemental reply unduly interferes with an Office action being prepared in response to the previous reply. Factors that will be considered in disapproving a second (or subsequent) supplemental reply include:

(i) The state of preparation of an Office action responsive to the previous reply as of the date of receipt (§ 1.6) of the second (or subsequent) supplemental reply by the Office; and

(ii) The nature of any changes to the specification or claims that would result from entry of the second (or subsequent) supplemental reply.